

Message Text

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ACTION SCS-03

INFO OCT-01 ARA-10 EUR-12 ISO-00 SCA-01 L-03 H-01
DHA-02 JUSE-00 CIAE-00 INR-07 NSAE-00 NSC-05
PRS-01 /046 W
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P 301635Z JUL 77
FM AMEMBASSY MEXICO
TO SECSTATE WASHDC PRIORITY 3892
INFO AMEMBASSY OTTAWA
ALL USCONS MEXICO POUCH

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E.O. 11652: NA
TAGS: CASC, MX
SUBJECT: SENATE HEARINGS ON IMPLEMENTING LEGISLATION FOR
TREATIES ON EXECUTION OF PENAL SENTENCES

REF: STATE 170338

1. DISCUSSION IN REFTTEL OF SENATOR BIDEN'S CONCERNS RE
UNFAVORABLE PUBLICITY WHICH MIGHT RESULT FROM TREATY
APPEAR TO REFLECT SOME CONFUSION BETWEEN THE ANTICIPATED
COLLATERAL ATTACKS ON TREATY THROUGH HABEAS CORPUS
PROCEEDINGS, AND THE NORMAL PAROLE PROCEEDINGS TO ARRANGE
FOR RELEASE OF TRANSFERRED PRISONERS UNDER U.S. FEDERAL
PAROLE REGULATIONS, WHICH IS PROVIDED FOR IN ARTICLE V(2)
OF THE TREATY.

2. WE CONSIDER IT A VIRTUAL CERTAINTY THAT SOME TRANS-
FERRED PRISONERS WILL ATTEMPT COLLATERAL ATTACKS ON THE
TREATY SHORTLY AFTER THEIR RETURN TO U.S. WITH SENATOR
BIDEN, WE CONSIDER ADVERSE COURT DECISIONS A DISTINCT
POSSIBILITY. IN OUR MOST RECENT ROUNDS OF DISCUSSIONS
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WITH GOM OFFICIALS ON PREPARATIONS FOR IMPLEMENTING TREATY
(JULY 19-27) DEPARTMENT OF JUSTICE REPRESENTATIVES HAVE
EMPHASIZED THE NEED TO PRERPRE TO DEFEND TREATY AGAINST
HABEAS CORPUS ATTACKS WHICH ARE ANTICIPATED. JUSTICE
REPRESENTATIVES, WHILE THEY CANNOT PROMISE COMPLETE
SUCCESS, HAVE INDICATED JUSTICE WILL EXERT EVERY EFFORT
TO DEFEND TREATY AGAINST SUCH CHALLENGES, AND THEY ARE

CONFIDENT THAT TREATY WILL ULTIMATELY BE UPHELD. FROM THESE AND PRIOR DISCUSSIONS, WE HAVE NO DOUBT GOM OFFICIALS ARE FULLY AWARE OF THE PROBLEM AND OF POSSIBILITY THAT ONE OR MORE ATTACKS MAY BE SUCCESSFUL, AT LEAST AT DISTRICT COURT LEVEL. FURTHER, WE ARE OF THE VIEW THAT GOM OFFICIALS ARE AWARE THAT HABEAS CORPUS PROCEEDINGS MAY GENERATE PUBLICITY DAMAGING TO MEXICO, BUT CERTAIN OFFICIALS MAY UNDERESTIMATE ITS INTENSITY. THE POSSIBLE EMBARRASSMENT TO U.S.-MEXICAN RELATIONS WHICH MIGHT RESULT FROM COURT HEARINGS DRAWING THE TREATY INTO QUESTION, OR FROM COURT DECISION STRIKING DOWN THE TREATY, IS AN IMPORTANT FACTOR WHICH HAS BEEN CONSIDERED FROM THE BEGINNING. THE CONSIDERED DECISION ON BOTH SIDES WAS TO ACCEPT THE RISK AND GO FORWARD WITH NEGOTIATIONS.

3. SENATOR BIDEN'S REFERENCE TO "RE-SENTENCING" PROCEDURE APPARENTLY RELATES TO THE FACT THAT WE WILL APPLY U.S. PAROLE LAWS TO SENTENCES HANDED DOWN BY MEXICAN COURTS, APPLYING OUR PAROLE PROCEDURES TO VIOLATORS OF MEXICAN LAW AS IF THEY HAD COMMITTED THE VIOLATION IN THE U.S. TO THE DEGREE THAT THE PAROLE COMMISSION IS ABLE TO PROCESS EXPEDITIOUSLY ALL CASES IN WHICH TRANSFEREES ARE IMMEDIATELY PAROLEABLE, WE BELIEVE THAT PRISONERS' MOTIVATION FOR GENERATING PUBLICITY WILL BE REDUCED. HOWEVER, IT IS ONLY REALISTIC TO ASSUME THAT EVERY ASPECT OF THE TRANSFER OF PRISONERS WILL OFFER OPPORTUNITIES FOR LIMITED OFFICIAL USE

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A FIELD DAY FOR THE NEWS MEDIA AND FOR THE PRISONERS WHO ARE STILL ANXIOUS TO PLEAD THEIR CAUSE.

4. WE BELIEVE THERE IS LITTLE GROUND FOR CONCERN OVER FINAL POINT IN PARA 6 REFTL, THAT MEXICAN PUBLIC AND GOVERNMENT MIGHT BE OFFENDED BY SUBSEQUENT PAROLE OF PRISONERS WHO WOULD NOT HAVE BEEN ELIGIBLE FOR PAROLE IN MEXICO. TREATY (ART V) PROVIDES FOR APPLICATION OF PENAL REGULATIONS AND PAROLE PROCEDURES OF RECEIVING STATE, AND GOM OFFICIALS WITH WHOM WE NEGOTIATED TREATY AND HAVE DISCUSSED IMPLEMENTATION ARE FULLY AWARE THAT MANY U.S. PRISONERS WILL BE ELIGIBLE FOR PAROLE IMMEDIATELY UPON TRANSFER.

5. EMBASSY WOULD PUT FORTH FOLLOWING ADDITIONAL CONSIDERATIONS THOUGHT TO BE RELEVANT BY BOTH EMBASSY AND GOM.

(A) THERE IS SOME POSSIBILITY THAT US-MEXICAN RELATIONS COULD BE TEMPORARILY AT LEAST HARMED IF TREATY DID NOT GO THROUGH. PRISONERS WOULD UNDOUBTEDLY GO ON STRIKE AND MAKE MORE FORCEFUL ATTEMPTS TO BRING ALLEGED VIOLATIONS OF HUMAN RIGHTS BEFORE INTERNATIONAL FORUM.

(B) ADVERSE PUBLICITY ABOUT THE MEXICAN PRISONS, TREATMENT OF PRISONERS AND THE JUDICIAL SYSTEM HAS ALREADY HAD LARGE PLAY IN THE U.S. PRESS. AS INDICATED ABOVE, WE EXPECT MORE OF THIS WHEN THE RETURN OCCURS BUT SUBJECT CAN ONLY RECEIVE SO MUCH TREATMENT BEFORE SATURATION POINT IS REACHED. WE MUST CONSIDER POSSIBILITY THAT SOME OF THE TRANSFERRED U.S. PRISONERS WILL, IN THEIR CONTACTS WITH U.S. PRESS, BE CRITICAL OF WAY MEXICAN OR THIRD-COUNTRY PRISONERS ARE DEALT WITH BY MEXICAN POLICE AND PRISON AUTHORITIES ON HUMAN RIGHTS GROUNDS, AND THAT GOM WILL FIND SUCH STATEMENTS OFFENSIVE TO MEXICO. WE KNOW OF NO WAY, HOWEVER, THAT THE POSSIBILITY OF SUCH STATEMENTS CAN BE AVOIDED.

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WE HAVE NOT RAISED THIS POSSIBILITY WITH GOM AND WOULD NOT PROPOSE TO DO SO.

(C) THE PRESENT ADMINISTRATION HAS MADE EFFORTS TO PUT SOME DISTANCE BETWEEN ITSELF AND FORMER ADMINISTRATION AND TO TAKE A MORE REALISTIC VIEW OF THE PROBLEM OF LAW ENFORCEMENT IN GENERAL. ATTORNEY GENERAL DOES NOT DENY THAT MEXICO HAS POLICE BRUTALITY PROBLEM REGARDING ARRESTEES AND PRISON PROBLEMS, BUT HE ALSO POINTS OUT THAT SIMILAR PROBLEMS, PARTICULARLY OF CONTROLLING THE ACTIONS OF OVERZEALOUS POLICE, ALSO OCCUR IN ALL COUNTRIES, INCLUDING THE U.S. WE CAN EXPECT THAT MEXICAN OFFICIALS WOULD TAKE THIS LINE IN DEALING WITH CRITICISM THAT U.S.

PRISONERS MAY REGISTER TO U.S. MEDIA FOLLOWING TRANSFER.
IF ATTACKS ARE VIOLENT WE MAY WELL GET COMPLAINTS,
INCLUDING REQUESTS THAT WE INTERVENE TO CALM THE PRESS
STORM, WHICH WE WOULD HAVE TO EXPLAIN OUR SYSTEM DOES NOT
PERMIT. LUCEY

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